

Private foundation self-dealing; trustee's travel from Puerto Rico to U.S. The payment or reimbursement by a private foundation of expenses incurred by a trustee, a government official of the Commonwealth of Puerto Rico, for roundtrip travel from Puerto Rico to the U.S. to attend the foundation's trustee meetings does not constitute an exception to self-dealing under section 4941(d)(2)(G)(vii) of the Code.

Advice has been requested whether the payment or reimbursement of travel expenses of a government official from the Commonwealth of Puerto Rico for roundtrip travel from Puerto Rico to the United States to attend board of trustee meetings of a private foundation constitutes an exception to self-dealing under section 4941 of the Internal Revenue Code of 1954.

A government official of the Commonwealth of Puerto Rico is a trustee of a private foundation located in the United States. As part of his duties, the trustee attends trustee meetings which are held in the United States. The foundation reimburses the trustee for traveling expenses he incurs in attending these meetings. Reimbursable expenses do not exceed the limitations specified in section 4941(d)(2)(G)(vii) of the Code.

Section 4941(d)(1)(D) of the Code provides that the term 'self-dealing' includes any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4946(a)(1)(I) of the Code provides that, for purposes of section 4941, a government official, as defined in section 4946(c), is a disqualified person.

Section 4946(c)(5) of the Code provides that the term 'government official' includes, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of the foregoing, or of the District of Columbia, and receives gross compensation at an annual rate of \$15,000 or more.

Section 4941(d)(2)(G)(vii) of the Code provides that self-dealing does not include, in the case of a government official (as defined in section 4946(c)), any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702(a) of Title 5, United States Code, for like travel by employees of the United States.

Section 7701(c) of the Code provides that, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

Section 7701(a)(9) of the Code provides that the term 'United States' when used in a geographical sense includes only the States and the District of Columbia.

A government official includes an individual who holds an elective or appointive public office in the government of a possession of the United States. Since the Commonwealth of Puerto Rico is treated as a possession of the United States, the government official of the Commonwealth of Puerto Rico is a disqualified person for purposes of section 4941 of the Code. However, the Commonwealth of Puerto Rico is not a 'point in the United States' since, for purposes of section 4941(d)(2)(G)(vii), 'United States' is used in a geographical sense and the Commonwealth of Puerto Rico is not a State. Accordingly, the payment or reimbursement of the trustee's traveling expenses for round-trip travel from Puerto Rico to the United States does not constitute an exception to self-dealing under section 4941(d)(2)(G)(vii).